

International Law Studies—Volume 8

International Law Situations

With Solutions and Notes

U.S. Naval War College (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S.

Government, the U.S. Department of the Navy or the Naval War College.

SITUATION II.

THE TWENTY-FOUR HOUR RULE.

There is a war between States X and Y. Other States are neutral. Three war ships of State X have entered port N of the United States, which has proclaimed the twenty-four hour rule. Within twenty-four hours a war ship of State Y enters port N. The three war ships of State X sail within the time allowed. The war ship of State Y sails twenty-five hours later. Soon after leaving port N, the war ship of State Y discovers several war ships of State X outside the three-mile limit, but near. The war ship of State Y returns to port N.

How should this war ship be treated?

SOLUTION.

The war ship of State Y should be allowed to return to the neutral port without necessarily incurring liability to internment, unless it is evident that this return is to escape military consequences to which this war ship has, through her own action, become subject after departure from port N.

NOTES ON SITUATION II.

Historical.—The rule that twenty-four hours, or a night and a day as it is sometimes stated, shall elapse between the departure of vessels of opposing belligerents from a neutral port seems to have been used in 1759 by Spain. War ships were at that time sometimes allowed to depart without this delay, provided the commander would not take advantage of the privilege to commit hostilities. The delay was, however, imposed on privateers. The "twenty-four hour rule" was later extended and quite generally adopted, with the additional requirement that the vessel must not remain longer than twenty-four hours unless under exceptional circumstances. This supplementary requirement was instituted largely as a result of the action of the U. S. S. *Tuscarora* which, in 1862 sailing out of Southampton Water before the Con-

federate cruiser *Nashville*, would return within the twenty-four hours, during which the *Nashville* would be obliged to remain and would again sail just before the *Nashville* would be able to sail. There have grown up various modifications to the original "twenty-four hour" interval between sailings with a view to making it a reasonable and workable rule. Vessels have been required to sail at the expiration of twenty-four hours. Their time of sailing has been determined by the order of arrival, etc.

Early regulations.—The action of Spain in 1759, as shown in the correspondence, was to introduce a delay between the sailing of vessels of the opposing belligerents sufficient to remove liability to conflict in the immediate neighborhood. (Ortolan, *Diplomatie de la Mer*, L. III, c. VIII.)

Articles 3, 4, and 5 of the neutrality regulations of the Italian States in 1778, states the reasons for a rule in regard to sailing of vessels of opposing belligerents.

ART. III. Un vaisseau quelconque de nations en guerre qui se trouvera à l'ancre au môle, ou à la Plage de Livourne ou à Portoferraio, et d'autres Echelles du Grand Duché, ne pourra point partir quand il y aura des Signaux au Fanal, ou quand il y aura à vue des bâtimens pour lesquels il n'est pas d'usage de mettre des signaux. Et si les vaisseaux de nations en guerre auront déjà mis à la voile, et qu'il paroissent des signaux au Fanal, ou des bâtimens, avant qu'ils aient passé la ligne du Melorie, ils seront rappelés par le Canon, et devront retourner pour jeter l'ancre. Et s'ils viennent de la mer et qu'après qu'ils seront entrés en deçà de la ligne du Melorie, ils se présentent à vue des bâtimens, ou qu'il se mettent des signaux au fanal, ils ne pourront point rebrousser chemin pour aller à leur rencontre, mais ils devront continuer leur route pour jeter l'ancre dans le Port ou à la Plage, sans molester les bâtimens qui arrivent.

ART. IV. Quand un vaisseau d'une nation en guerre aura jetté l'ancre au môle ou à la plage, il dépendra de celui qui est arrivé le premier, de partir avant ou après l'autre, cependant de tels bâtimens d'une nation en guerre ne pourront partir que vingt-quatre heures après le départ d'autres bâtimens de pavillon quelconque.

ART. V. Et comme, vu qu'il entrent frequemment des vaisseaux dans nos Ports, et particulièrement dans celui de Livourne, et qu'ils en repartent de même, les vaisseaux de nations en guerre pourroient être longtems empêchés de partir, au préjudice du commerce, nous voulons qu'il leur soit permis de partir même dans l'espace du tems defendu

par la presente constitution, pourvu que les Capitaines des vaisseaux de guerre chaque fois qu'ils voudront partir, ou les Commandans des Flottes ou Escadres une fois pour toutes donnent leur parole d'honneur aux Gouverneurs de Livourne et de Portoferraajo, de ne point molester les navires signalés et ceux qui seront a portée de vue, ou ceux qui seront partis pendant les vingt-quatre heures, de quelque nation ou pavillon qu'ils soient. Et les Capitaines et maitres de navires marchands ou les armateurs donneront caution suffisante pour observation des susdites conditions. (4 De Martens, Recueil des Traités, 207.)

By the Austrian ordinance of August 7, 1803, it was planned to avoid conflict near the Austrian coast:

ART. XI. Comme tous les vaisseaux, sans exception, doivent jouir de la protection, qui dérive de la neutralité, et d'une parfaite sûreté dans tous les Ports, rades et côtes soumises à notre domination, on ne permettra point qu'il soit exercé des hostilités par un ou plusieurs vaisseaux des puissances en guerre, dans les dits Ports, et à une distance d'une portée de Canon des côtes, ni conséquemment qu'il soit livré de combat, poursuivi, attaqué, visité ou saisi de bâtimens. A quoi toutes nos autorités, et particulièrement les Commandans Militaires dans les Ports de mer, devront spécialement veiller.

ART. XII. En vertu des droits résultans de la même Neutralité, il ne sera point permis aux Vaisseaux des Puissances Belligérantes, de croiser devant nos Ports à la distance mentionnée dans l'Article précédent, pour y attendre les bâtimens sortans ou entrans; bien moins encore de s'arrêter dans les dits Ports avec le dessein d'aller à la rencontre des bâtimens, qui doivent arriver, ou de suivre ceux qui veulent mettre en mer.

ART. XIII. Lorsque des Corsaires ou bâtimens marchands armés des deux puissances belligérantes se trouveront en même tems dans nos Ports, et qu'un d'eux voudra remettre en mer, l'autre ne pourra sortir que 24 heures après; bien entendu que le bâtiment, qui a le premier jetté l'ancre dans le Port, conservera la faculté de remettre en mer, avant ou après l'autre. Les vaisseaux de guerre, ou des Escadres entières, ne seront cependant point soumis à ce délai de 24 heures, pourvu toutefois que leurs Commandans donnent leur parole d'honneur au Gouverneur ou premier Officier du Port, de ne poursuivre ou inquiéter pendant ce laps de tems, aucun bâtiment de son ennemi. Cette parole sera donnée une fois pour toutes, par les Commandans des Flottes et Escadres: les Capitaines des vaisseaux particuliers devront renouveler cette promesse chaque fois qu'il voudront remettre en mer. Quant aux Capitaines de bâtimens marchands armés ou Corsaires, ils ne pourront sortir de Port avant les 24 heures écoulées, qu'après avoir fourni une Caution réelle de l'accomplissement de leur promesse.

ART. XIV. Il ne sera point permis aux bâtimens de puissances belligérantes de sortir du Port, au moment où l'on auroit signalé l'arrivée d'un bâtiment étranger, à moins que, comme il a été statué dans l'Ar-

ticle précédent, le Commandant des vaisseaux de guerre n'ait donné sa parole, et les bâtimens marchands et armateurs n'aient fourni la Caution suffisante, de s'abstenir de tout acte d'hostilité contre les dits bâtimens. (3 Supplément, De Martens, Recueil des Traités, p. 544.)

The aim of the original rules in regard to the delay of twenty-four hours was to put this period of time between the pursuit or attack by the vessels of one belligerent of those of the other. As Rosse says of the Austrian ordinance of 1803:

L'ordonnance autrichienne de 1803 sanctionne une règle différente: elle ne rend pas obligatoire l'intervalle de 24 heures pour la sortie, mais elle impose aux commandants de bâtimens armés l'obligation de donner au capitaine du port leur parole d'honneur d'attendre en mer l'expiration d'un délai de 24 heures, avant de poursuivre ou d'attaquer les navires ennemis. (Guide Int. du Commandant de Bâtiment de Guerre, p. 202.)

President Grant's proclamation, 1870.—The position of the United States was set forth in 1870 in the proclamation of October 8:

Whereas on the 22d day of August, 1870, my proclamation was issued, enjoining neutrality in the present war between France and the North German Confederation and its allies, and declaring, so far as then seemed to be necessary, the respective rights and obligations of the belligerent parties and of the citizens of the United States; and whereas subsequent information gives reason to apprehend that armed cruisers of the belligerents may be tempted to abuse the hospitality accorded to them in the ports, harbors, roadsteads, and other waters of the United States, by making such waters subservient to the purposes of war:

Now, therefore, I, Ulysses S. Grant, President of the United States of America, do hereby proclaim and declare that any frequenting and use of the waters within the territorial jurisdiction of the United States by the armed vessels of either belligerent, whether public ships or privateers, for the purpose of preparing for hostile operations, or as posts of observation upon the ships of war or privateers or merchant vessels of the other belligerent lying within or being about to enter the jurisdiction of the United States, must be regarded as unfriendly and offensive, and in violation of that neutrality which it is the determination of this Government to observe; and to the end that the hazard and inconvenience of such apprehended practices may be avoided, I further proclaim and declare that from and after the 12th day of October instant, and during the continuance of the present hostilities between France and the North German Confederation and its allies, no ship of war or privateer of either belligerent shall be permitted to make use of any port,

harbor, roadstead, or other waters within the jurisdiction of the United States as a station or place of resort for any warlike purpose, or for the purpose of obtaining any facilities of warlike equipment; and no ship of war or privateer of either belligerent shall be permitted to sail out of or leave any port, harbor, or roadstead, or waters subject to the jurisdiction of the United States, from which a vessel of the other belligerent (whether the same shall be a ship of war, a privateer, or a merchant ship) shall have previously departed, until after the expiration of at least twenty-four hours from the departure of such last-mentioned vessel beyond the jurisdiction of the United States. (U. S. Foreign Relations, 1870, p. 48.)

A similar proclamation was issued by the United States in consequence of the Russo-Japanese war of 1904-5.

In regard to this proclamation by President Grant of October 8, 1870, Sir Edward Thornton wrote to Earl Granville:

WASHINGTON, *October 10, 1870.*

My LORD: I have the honor to inclose a copy of a proclamation which was signed by the President of the United States on the 8th instant, and published yesterday, as to the manner in which, with reference to the war now existing between France and the North German Confederation and its allies, the armed vessels of either belligerent, whether public ships or privateers, are to be treated in the ports of the United States. The contents of this proclamation are in many respects similar to the orders recently given by Her Majesty's Government with respect to the treatment of such vessels in British ports.

It would seem that the issue of this document has been instigated by the recent conduct of French vessels of war in the neighborhood of the port of New York. It is said that French gunboats have lately moored about the entrance of that port, and have sometimes been anchored outside, within 3 miles of the coast, for the purpose of intercepting any North German vessels which might leave New York, and particularly the German steamers, which, in consequence of the termination of the blockade of the German ports, have renewed their voyages. On one occasion the French gunboat *Latoûche Tréville* steamed up the bay of New York, round the German steamer *Hermann*, went out again, and anchored outside.

A French frigate and two smaller vessels of war arrived lately at New London, in Connecticut, on the pretext of requiring repairs; they remained there for some days, although they only had to repair some spars, which could have been done nearly as well at sea as on shore. From that point notice could be given of the sailing of German vessels from New York, and men-of-war stationed at New London could easily have intercepted them.

Mr. Fish told me that he had represented to the French minister, that, although he could not positively allege a violation of international law, he considered that the proceedings of belligerent vessels of war in hovering about the entrance of a neutral port and as it were, blockading it and making the neighborhood a station for their observations, were contrary to custom, and were unfriendly and uncourteous to the United States. Mr. Fish added that Mr. Berthemy had written upon the subject to the French admiral, who in reply had denied the fact of hovering about the port or of using the neighborhood as a station of observation; but confessed that the proceeding of the *Latouche Tréville* in entering the port of New York for the purpose of observing the German steamer *Hermann* was improper, and that her commander had consequently been severely reprimanded.

My Prussian colleague in expressing his satisfaction at the issue of the inclosed proclamation, has made observations which lead me to suppose that he imagines that by the its provisions merchant vessels are prohibited from exporting arms and ammunition from the ports of the United States for the use of the belligerents, and I fear that he may have telegraphed in that sense to his Government, but though I did not feel called upon to question Baron Gerolt's view of the case, I can find no expressions in the proclamation which justify such an interpretation; indeed, Mr. Fish denies that it was intended to convey any such meaning.

I have, etc.,

EDW. THORNTON.

(61 British and Foreign State Papers, 1870-71, p. 878.)

The Netherlands order, 1893.—The Netherlands royal order of February 2, 1893 (Official Gazette, No. 46), in article 5 provides:

If, however, war ships or other ships and vessels of the parties at war should simultaneously be in the same harbor, roads, or sea channel of the State, a period of twenty-four hours shall elapse between the departure of a ship or ships, of a vessel or vessels, of the one party and the departure of a ship or ships, of a vessel or vessels, of the other party.

This period, according to circumstances, may be extended by the local maritime authorities.

Neutrality proclamations.—The French declaration of neutrality in 1898, to which that of 1904 corresponded, was as follows:

The Government decides in addition that no ship of war of either belligerent will be permitted to enter and to remain with her prizes in the harbors and anchorages of France, its colonies and protectorates, for more than twenty-four hours, except in the case of forced delay or justifiable necessity.

While the Italian authorities proclaimed the twenty-four-hour rule, their mercantile marine code allows some degree of freedom of judgment:

ART. XI. If ships of war, cruisers, or merchant vessels belonging to the two belligerent parties should be at the same time in a port or roadstead or on the coast of the Kingdom, there must be an interval of at least twenty-four hours between the departure of any vessel of one belligerent party and that following of any ship of the other party. This interval may be increased according to the circumstances by the maritime authority of the place.

Similar discretion was allowed by other States.

The Brazilian regulations issued at the outbreak of the Spanish-American war in 1898 provide that—

VI. No war ship or privateer shall be permitted to enter and remain, with prizes, in our ports or bays during more than twenty-four hours, except in case of a forced putting into port, and in no manner shall it be permitted to it to dispose of its prizes or of articles coming out of them.

By the words "except in case of a forced putting into port" should also be understood that a ship shall not be required to leave port within the said time:

First. If it shall not have been able to make the preparations indispensable to enable it to go to sea without risk of being lost.

Second. If there should be the same risk on account of bad weather.

Third. And, finally, if it should be menaced by an enemy.

In these cases, it shall be for the Government, at its discretion, to determine, in view of the circumstances, the time within which the ship should leave.

Belgian decree, 1901.—A Belgian royal decree of February 18, 1901, made a definite statement in regard to the return of war vessels to a neutral port:

ART. VIII. Vessels belonging to the navy of a power engaged in a maritime war are only admitted in the Belgian territorial waters and harbors for a stay of twenty-four hours. The same vessel will not be admitted twice within the space of three months.

The prohibition of entrance to a neutral port for a period of three months from the date of taking coal in that port has been general, as in Article XIII of this Belgian decree:

In no case shall vessels of war or privateers of a nation engaged in a maritime war be furnished with supplies or means of repairs in excess of what is indispensable to reach the nearest port of their country, or of

a nation allied to theirs in the war. The same vessel may not, unless specially authorized, be provided with coal a second time until the expiration of three months after a first coaling in a Belgian port.

In regard to the sailing of vessels of the two belligerents from Belgian ports, the decree provides:

ART. XIX. Should men-of-war or merchant vessels of two nations in a state of war happen to be at the same time in a Belgian harbor or waters, there shall occur an interval of at least twenty-four hours, fixed by the competent authorities, between the departure of a vessel of one of the belligerents and the subsequent departure of a vessel of the other belligerent.

In this case an exception may be made in regard to the prescriptions of Article VIII.

Priority of request secures priority of sailing.

However, the weaker of the two vessels may be allowed to sail first.

There is also provision against using a Belgian port as a base:

ART. XV. They must abstain from any act intended to convert their place of refuge into a base of operation whatever against their enemies, and also from any investigation into the resources, forces, or location of their enemies.

A certain degree of freedom is left to the Government in cases warranted by special circumstances:

ART. XX. The Government reserves the right to modify the provisions of Articles VIII and following of the present order, with the view to taking, in special cases and under exceptional circumstances arising, all measures which the strict observation of neutrality might render opportune or necessary.

Opinion of Professor Lawrence.—Lawrence says of the “twenty-four hour rule:”

In recent times neutral states have acted upon their right of imposing conditions on belligerent vessels visiting their ports. The twenty-four hour rule is the oldest and the most common. It lays down that when war vessels of opposing belligerents are in a neutral port at the same time, or when war vessels of one side and merchant vessels of the other are in the like predicament, at least twenty-four hours shall elapse between the departure of those who leave first and the departure of their opponents. The object of this injunction is to prevent the occurrence of any fighting either in the waters of the neutral or so close to them as to be dangerous to vessels frequenting them. Sometimes the word of the commanders that they will not commence hostilities in or near neutral territorial waters has been accepted as sufficient. (Principles of Int. Law, p. 509.)

Opinion of Hall.—Hall, speaking of the “twenty-four-hour rule,” writing before the Second Hague Conference, says:

The neutral may take what precautions he chooses in order to hinder a fraudulent use being made of his ports provided he attains his object. If he prefers to rely upon the word of a commander, there is nothing to prevent him. Even if the twenty-four hours’ rule becomes hardened by far longer practice than now sanctions it, the right of the neutral to vary his own port regulations can never be ousted. The rule can never be more than one to the enforcement of which a belligerent may trust in the absence of notice to the contrary. (Int. Law, 5th ed., p. 628n.)

The regulations have not been uniform, but the aim has usually been definite. Hall says:

If a belligerent can leave a port at his will, the neutral territory may become at any moment a mere trap for an enemy of inferior strength. Accordingly during a considerable period, though not very generally or continuously, neutral states have taken more or less precaution against the danger of their waters being so used. Perhaps the usual custom until lately may be stated as having been that the commander of a vessel of war was required to give his word not to commit hostilities against any vessel issuing from a neutral port shortly before him, and that a privateer as being less a responsible person was subjected to detention for twenty-four hours. (Int. Law, 5th ed., p. 627.)

French opinion.—A French writer has recently said of the “twenty-four hour rule:”

La première a pour but d’éviter que des hostilités se produisent dans un trop proche voisinage d’un port neutre où deux navires belligérants ennemis ont dû chercher asile en même temps. Il peut arriver, en effet—et cela arrive plus particulièrement lorsque c’est le mauvais temps, qui n’a de ménagements pour personne, qui a contraint des belligérants à chercher un refuge—que des vaisseaux ennemis se rencontrent dans un même port neutre. Tant que ces vaisseaux se trouveront dans le territoire neutre, il est à croire que les règles formelles qui s’opposent à toute hostilité sur ce territoire les empêcheront de se livrer bataille dans ce port neutre ou dans ces eaux. Mais le parti le plus fort pourrait cependant profiter de cette réunion fortuite, et, sortant du port neutre en même temps que son ennemi plus faible, il pourrait l’assaillir aussitôt en pleine mer, et lui infliger une défaite certaine. C’est en vue d’éviter d’aussi regrettables conséquences à l’asile que les Etats neutres ont adopté la règle dite des vingt-quatre heures, ainsi formulée par la France dans ses dernières instructions. Lorsque des belligérants ou navires de commerce des deux belligérants se trouveront ensemble dans un port français, il y aura un intervalle qui ne pourra être moindre de vingt-quatre heures entre le départ de

tout navire de l'un des belligérants et le départ subséquent de tout bâtiment de l'autre. Ce délai sera étendu, en cas de besoin, sur l'ordre de l'autorité maritime, autant que cela pourra être nécessaire. (René Gaborit, Questions de Neutralité Maritime soulevées par la Guerre Russo-Japonaise, p. 161.)

Azuni's rules.—Azuni's rules in regard to the application of the "twenty-four hour rule" to war ships of belligerents in neutral ports:

V. They cannot set sail as soon as an enemy's ship has weighed anchor. Twenty-four hours, at least, ought to intervene between the departure of the one and that of the other. Where that time has elapsed, if the enemy-vessel be still in sight of the port, their departure ought to be delayed, until the vessel is out of sight, and it is unknown what course she has steered.

VI. They cannot lie in wait in bays or gulfs, nor conceal themselves behind capes, headlands or the small islands belonging to the neutral territory, to be on the look-out and ready to chase the vessels of their enemy. They ought not, in any manner, to hinder the approach of vessels of any nation whatever to the ports and shores of neutral powers. (Maritime Law of Europe, Part 2, Chap. V, Art. I, sec. 7.)

Opinion of Kleen.—Of the rule in regard to the number of war ships of a belligerent permitted to be in a neutral port at the same time, Kleen says:

Afin d'éviter les dangers et inconvénients résultant de la présence simultanée, dans un port, de trop de navires de guerre, notamment du même État, plusieurs législations ont depuis longtemps fixé un certain nombre pour chaque pavillon, comme *maximum* de ces navires admis en même temps. Autrefois, surtout au XVIII. siècle, ce nombre, variant de trois à huit, fut même établi par des traités. Encore aujourd'hui, on retrouve dans diverses législations nationales cet expédient suranné de parer aux inconvénients d'hôtes gênants, même en temps de paix. L'avantage est douteux, tant que la loi ne s'en tient qu'au nombre des navires et non à celui des canons. Grâce à la construction moderne, un seul cuirassé peut exposer la tranquillité d'un port à plus de danger qu'une huitaine de croiseurs ordinaires. D'ailleurs, la force militaire étrangère peut difficilement être vérifiée par les autorités de la place. Il est donc moins pratique de s'occuper de la question de force ou de nombre, que d'établir simplement: en temps de paix, la permission demandée pour chaque fois comme condition d'entrée, et en temps de guerre, la défense, hors l'asile accordé à la détresse.

2°. Les États qui, étant neutres, admettent encore les navires de guerre des belligérants dans leurs ports, même sans détresse, comme par exemple l'Angleterre et l'Italie, limitent alors le droit de séjour à un temps très court (24 heures). (I Kleen, La Neutralité, p. 536.)

Regulations of the Institute of International Law.—The Institute of International Law in its session at Edinburgh in 1904 outlined the rules which are generally recognized in cases of sojourn of war ships of belligerents in neutral ports and their departure from such ports:

ART. 42. La concession d'asile aux belligérants dans les ports neutres, tout en dépendant de la décision de l'État souverain du port et ne pouvant être exigée, est présumée, à moins de notification contraire préalablement communiquée.

Toutefois, quant aux navires de guerre, elle doit être limitée aux cas de véritable détresse, par suite de: 1^o défaite, maladie ou équipage insuffisant; 2^o péril de mer; 3^o manque de moyens d'existence ou de locomotion (eau, charbon, vivres); 4^o besoin de réparation.

Un navire belligérant se réfugiant dans un port neutre devant la poursuite de l'ennemi, ou après avoir été défait par lui, ou faute d'équipage pour tenir la mer, doit y rester jusqu'à la fin de la guerre. Il en est de même s'il y transporte des malades ou des blessés, et qu'après les avoir débarqués, il soit en état de combattre. Les malades et les blessés, tout en étant reçus et secourus, sont, après guérison, internés également, à moins d'être reconnus impropres au service militaire.

Un refuge contre un péril de mer n'est donné aux navires de guerre des belligérants que pour la durée du danger. On ne leur fournit de l'eau, du charbon, des vivres et autres approvisionnements analogues qu'en la quantité nécessaire pour atteindre le port national le plus proche. Les réparations ne sont permises que dans la mesure nécessaire pour que le bâtiment puisse tenir la mer. Immédiatement après, le navire doit quitter le port et les eaux neutres.

Si deux navires ennemis sont prêts à sortir d'un port neutre simultanément, l'autorité locale établit, entre leurs appareillages, un intervalle suffisant, de 24 heures au moins. Le droit de sortir le premier appartient au navire le premier entré, ou, s'il ne veut pas en user, à l'autre, à la charge d'en réclamer l'exercice à l'autorité locale, qui lui délivre l'autorisation si l'adversaire, dûment avisé, persiste à rester. Si, à la sortie d'un navire d'un belligérant, un ou plusieurs navires ennemis sont signalés, le navire sortant doit être averti et peut être réadmis dans le port pour y attendre l'entrée ou la disparition des autres. Il est défendu d'aller à la rencontre d'un navire ennemi dans le port ou les eaux neutres.

Les navires des belligérants doivent, en port neutre, se conduire pacifiquement, obéir aux ordres des autorités, s'abstenir de toutes hostilités, de toute prise de renfort et de tout recrutement militaire, de tout espionnage et de tout emploi du port comme base d'opération.

Les autorités neutres font respecter, au besoin par la force, les prescriptions de cet article.

L'Etat neutre peut exiger une indemnité de l'Etat belligérant dont il a entretenu soit des forces légalement internées, soit des malades et blessés, ou dont des navires ont, par mégarde ou par infraction à l'ordre du port, occasionné des frais ou dommages." (20 Annuaire de l'Institut de Droit International, 1904, p. 338.)

British propositions in 1907.—Great Britain made the following propositions at the conference at The Hague in 1907 in regard to the sojourn of belligerent ships in neutral ports:

(11) Une puissance neutre devra notifier à tout navire de guerre d'une puissance belligérante—stationnant à sa connaissance dans ses ports ou eaux territoriales au moment de l'ouverture des hostilités—qu'il ait à partir dans les 24 heures.

(12) Une puissance neutre ne devra pas sciemment permettre à un navire belligérant de demeurer dans ses ports ou eaux territoriales pour une période de plus de 24 heures, sauf dans les cas prévus aux articles de la présente convention.

(13) Si des navires, soit de guerre soit de commerce, des deux parties belligérantes se trouvent au même moment dans le même port ou la même rade d'un neutre, le Gouvernement neutre ne devra pas permettre à un vaisseau de guerre d'un des belligérants de quitter le port ou la rade sauf à l'expiration d'un délai de 24 heures après le départ d'un navire, tant de guerre que de commerce, de l'autre belligérant.

(14) Si pour des raisons quelconques un navire de guerre belligérant ne quitte pas le port ou les eaux d'une puissance neutre après avoir reçu un avis d'avoir à partir, il sera interné jusqu'à la fin de la guerre par la puissance neutre, sauf dans le cas où il aurait été retenu à cause du mauvais état de la mer.

(15) Lorsqu'un navire de guerre d'un belligérant se réfugie dans des eaux neutres afin d'échapper à la poursuite de l'ennemi, il incombe au Gouvernement de l'Etat neutre de l'interner jusqu'à la fin de la guerre.

Application of the Hague Convention to the situation.—The Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Naval War recognizes in its introductory clauses that there are many unsettled questions in the field of neutral rights and duties which the convention does not cover. The convention is, however, a decided contribution toward uniform regulations.

According to Article XV of this convention:

In the absence of special provisions to the contrary in the legislation of a neutral Power, the maximum number of war ships belonging to a belligerent which may be in one of the ports or roadsteads of that Power simultaneously shall be three.

This is in accord with the rules for the Netherlands Indies in 1904. An Austrian ordinance of August 7, 1803, allowed six vessels of a belligerent to enter its ports. These were, of course, sailing vessels.

The United States under the Hague Convention, which with reservation as to Article III and the exclusion of Article XXIII, was adhered to April 17, 1908, would be acting properly in admitting the three war ships of State X.

The United States has generally proclaimed the twenty-four hour rule which would render Article XII of the convention operative:

In absence of special provisions to the contrary in the legislation of a neutral Power, belligerent war-ships are not permitted to remain in the ports, roadsteads, or territorial waters of the said Power for more than twenty-four hours, except in the cases covered by the present Convention.

The entrance of the war ship of State Y into the United States port brings the vessels of the belligerents under Article XVI.

When war ships belonging to both belligerents are present simultaneously in a neutral port or roadstead, a period of not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other.

The order of departure is determined by the order of arrival, unless the ship which arrived first is so circumstanced that an extension of its stay is permissible.

A belligerent war ship may not leave a neutral port or roadstead until twenty-four hours after the departure of a merchant-ship flying the flag of its adversary.

The three war ships of State X sail within the twenty-four hour period.

The war ship of Y sails twenty-five hours later, in accord with the provisions of Article XVI.

The war ship of State Y soon after leaving the neutral port N of the United States discovers several war ships of State X outside the 3-mile limit, but near, and returns to port N. The question naturally arises as to whether the war ship which returns under these circumstances is liable to be interned by the United States.

The object of the so-called "twenty-four hour rule" should be considered in determining what action should be taken under it. The thirteenth convention of the Second Hague Conference definitely states that "in cases not covered by the present convention, it is expedient to

take into consideration the general principles of the law of nations." The provisions must therefore be interpreted with reference to their real purpose.

Article 16 of the thirteenth convention of the Second Hague Conference definitely provides that "not less than twenty-four hours must elapse between the departure of the ship belonging to one belligerent and the departure of the ship belonging to the other."

Article 24 provides for the internment, "if, notwithstanding the notification of the neutral power, a belligerent ship of war does not leave a port where it is not entitled to remain."

The war ship of State Y had not, according to the situation, been notified to leave port N, but on leaving discovers the war ships of State X near by, and even if it had returned after notification, the Hague Convention provides that a state "is entitled" to take measures against the vessel, not that it must take such measures.

Case of the Harvard, 1898.—An incident in the early stages of the Spanish-American war of 1898 suggests the need of an amplification of the rule by which a belligerent man-of-war is required, except in case of stress of weather or of need of provisions or repairs, to leave a neutral port within twenty-four hours after her arrival:

On May 11, 1898, Captain Cotton, of the auxiliary cruiser *Harvard*, cabled from St. Pierre, Martinique, to the Secretary of the Navy, that the Spanish torpedo-boat destroyer *Furor* had touched during the afternoon at Fort de France, Martinique, and had afterwards left, destination unknown, and that the governor had ordered him not to sail within twenty-four hours from the time of the *Furor's* departure. At noon on the 12th of May Captain Cotton was informed by the captain of the port at St. Pierre that the *Furor* had about 8 a. m. again called at Fort de France and would leave about noon, and that he might go to sea at 8 p. m.; but that if he did not do so, he would be required to give the governor twenty-four hours' notice of his intention to leave the port. On the same day Captain Cotton received information which led him to telegraph to the Secretary of the Navy that he was closely observed and blockaded at St. Pierre by the Spanish fleet, and that the Spanish torpedo-boat destroyer *Terror* was at Fort de France. Later, Captain Cotton cabled that the Spanish consul protested against his stay at St. Pierre, and that he had requested permission to remain a week to make necessary repairs to machinery. Replying to these

reports the Secretary of the Navy telegraphed to Captain Cotton as follows: "Vigorously protest against being forced out of the port in the face of superior blockading force, especially as you were detained previously in the port by the French authorities because Spanish men-of-war had sailed from another port. Also state that United States Government will bring the matter to the attention of the French Government. Urge United States consul to protest vigorously." It proved to be unnecessary to take further action. Captain Cotton's request for time was granted. The governor showed no disposition to force him out of port, only requiring twenty-four hours' notice of an intention to sail; and the dangers to which the *Harvard* seemed to be exposed soon disappeared. It may be observed, however, that as the enforcement under circumstances such as were described of the twenty-four hours' limit would constitute a negation of the admitted privilege of asylum, it is not likely that it would be held to be applicable in such a situation. (Int. Law Situations, 1901, p. 147.)

General summary.—While the neutral state would of course have no jurisdiction over a war ship or fleet which had recently left its territory, even though it might remain off its coast, yet the neutral state would have the power to determine what vessels it might admit in view of a failure by the ship or fleet to observe the spirit of the regulations which the neutral state had established in regard to departure and sojourn. (Perels, *Öffentliche Seerecht der Gegenwart*, sec. 39, III, 3.)

If in the situation under consideration the war ships of State X were those which had last left port N, they would in effect be blockading the United States port N, a neutral port, for a bona fide departure twenty-four hours in advance of the ship of State Y would have taken the ships of State X by that much out of the range of of this ship of State Y. The offense is not in such a case in the ship of State Y, last departing, but in the ships of State X, whose departure purported to have been taken twenty-four hours earlier. The vessel of State Y should therefore be permitted to return to port in such a case without liability to internment.

If the war ships of State X were other than those which had recently left port N and were about to enter port N, it has been customary to allow the vessel about to depart to return or even for the neutral to summon

the vessel to return when vessels of one of the belligerents are sighted as vessels of the other belligerent leave the port.

If the war ships of State X off the port were other than those which had recently left port N and were not about to enter port N it would not be customary to force the war ship of State Y to meet these vessels, and her return would be permitted unless it should be evident that the original entrance to port N was in the nature of an attempt to escape capture and this return was in fact a part of the same transaction.

CONCLUSION.

The war ship of State Y should be allowed to return to the neutral port without necessarily incurring liability to internment, unless it is evident that this return is to escape military consequences to which this war ship has, through her own action, become subject after departure from port N.